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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF: D.S.,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0606-JV-313
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gregory, Judge
Cause No. 49D09-0512-JD-5232

March 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

D.S. appeals his adjudication as a delinquent child for committing acts that would constitute Resisting Law Enforcement,¹ a class A misdemeanor, if committed by an adult. D.S. presents a single issue for review: was there sufficient evidence to support the true finding of resisting law enforcement?

We affirm.

The facts favorable to the true finding are that at the time of the events upon which the true finding is based, D.S. was fourteen years old. On October 28, 2005, D.S. was with his father and three brothers in a Kroger store in Marion County. While their father was shopping, the four brothers began to toss groceries around in the produce section of the store. They were “hollering and yelling” loudly enough that they could be heard “half way across the store.” *Transcript* at 16. At that time, Officer Lucien DeClonne, a court deputy for the Marion County Sheriff’s Department, was working as a security officer at the store. Officer DeClonne approached the boys, showed them his Sheriff’s Department badge, and said to them, “[H]ey I am store security. I am Deputy Sheriff and people probably don’t appreciate you throwing food around ... because you have to eat that.” *Id.* at 12. He asked the boys to pick up the food they had thrown on the floor and put it back where they found it. At this point, the boys’ father had left the vicinity and was shopping in a different area of the store. Officer DeClonne again showed the boys his badge, advised them that they needed to have respect for other people, and walked away.

¹ Ind. Code Ann. § 35-44-3-3 (West, PREMISE through 2006 Second Regular Session).

A short time later, the boys' father was in the check-out area of the store and the boys again began "acting a little wild, loud." *Id.* Officer DeClonne again approached the boys, showed them his badge, and again advised the children they needed "to learn some respect for people." *Id.* at 13. The boys began "jumping around a little wildly ... talking loudly." *Id.* Officer DeClonne described what happened next:

One of the young kids said something so I told him to go ahead and leave and he told me he didn't have to because he was with his father. Well then I told him again, leave the store now so he began to leave. A few seconds later ... [D.S.] said something, not sure what it was. I told him to leave the store also. There were customers coming in the store as he was exiting in between the foyer and he yelled out this is a bunch of fucking bullshit.

Id. at 13-14. After D.S. yelled out as indicated above, he continued to walk away. Officer DeClonne told D.S. he wanted to talk to him and ordered him to stop, again identifying himself "both visually and verbally, showing the badge and saying Sheriff's Department." *Id.* at 14. D.S. did not obey the officer's command to stop, but instead began to run away. With Officer DeClonne in pursuit, D.S. ran past his father's vehicle and covered a distance of about 130 feet before he lost his balance and fell. Officer DeClonne subdued D.S. and placed him in handcuffs.

On December 25, 2005, a delinquency petition was filed alleging that D.S. had committed acts that would constitute the crimes of resisting law enforcement (fleeing) and disorderly conduct (disruptive behavior in store and epithet uttered to Officer DeClonne) if committed by an adult. Following a hearing, the court entered a "not true"

finding with respect to the disorderly conduct allegation and a true finding with respect to the resisting law enforcement allegation.

D.S. contends the evidence is insufficient to support the true finding of resisting law enforcement. When reviewing the sufficiency of evidence supporting a true finding in a juvenile case, we are mindful that the State must prove every element of an offense beyond a reasonable doubt. *S.D. v. State*, 847 N.E.2d 255 (Ind. Ct. App. 2006), *trans. denied*. When conducting our review, we will not reweigh the evidence, judge the witnesses' credibility, or resolve conflicts in testimony, because these are determinations properly made by the trier of fact. *Id.* Instead, we look to the evidence and the reasonable inferences to be drawn therefrom that support the true finding. *Id.* We will affirm a true finding if there is probative evidence from which the factfinder could conclude the allegations are true beyond a reasonable doubt. *Id.*

In order to sustain a true finding for resisting law enforcement, the State was required to prove D.S. “fle[d] from a law enforcement officer after the officer ha[d], by visible or audible means, ... identified himself or herself and ordered the person to stop[.]” I.C. § 35-44-3-3(a)(3). Upon appeal, D.S. contends the evidence did not show that he heard Officer DeClonne’s order to stop. D.S. supports his claim by asserting “DeClonne never testified that [D.S.] heard his *second* order. [D.S.] testified that he never heard the *second* order.” *Appellant’s Brief* at 4 (emphasis in original). The stressed “*second*” order to which D.S. refers was, of course, the order to stop. The “first” order was Officer DeClonne’s order to the four brothers to leave the store.

D.S.'s argument implies the only two sources of evidence to prove what D.S. heard were the testimonies of the principals in this case. That is not the case. First, as hearing is a sensory experience and thus entirely subjective, the only person who can know what D.S. heard is D.S. Thus, Officer DeClonne can relate what he said, but he cannot, in reality, know what D.S. heard. At most, Officer DeClonne could assess the circumstances and draw inferences on that question. DeClonne simply cannot provide direct evidence about what D.S. heard. Of course, D.S. knows what he heard and could and did offer testimony on that subject. We note, however, that the trial court was not bound to believe D.S.'s claims about that or anything else. *See Buckner v. State*, 857 N.E.2d 1011 (Ind. Ct. App. 2006). In fact, the State was not limited to D.S.'s or Officer DeClonne's testimonies on the subject of what D.S. heard in order to prove that element of its case. Circumstantial evidence will support a conviction if inferences may reasonably be drawn therefrom that enable the trier of fact to find the defendant guilty beyond a reasonable doubt. *Pierce v. State*, 761 N.E.2d 821 (Ind. 2002).

The evidence showed that when D.S. was ordered to leave the store, he walked away and began to exit the building. When he was almost outside, D.S. uttered an expletive and was ordered by Officer DeClonne to stop. It was precisely at that moment that D.S. started to run in a direction away from Office DeClonne. D.S. claimed he began running as he got outside the store only because he was wearing light clothing and it was cool outdoors, and he wanted to get in his father's vehicle as quickly as possible. That claim is undercut both by the timing of D.S.'s commencing to run and the fact that

he ran past his father's vehicle and continued running until he fell. From those circumstances, the trial court could reasonably infer that D.S. heard Officer DeClonne's command to stop and knowingly fled in defiance of it. This is sufficient to support the true finding that D.S. committed acts that would constitute the crime of resisting law enforcement if committed by an adult. *See Roberts v. State*, 799 N.E.2d 549 (Ind. Ct. App. 2003).

Judgment affirmed.

RILEY, J., and KIRSCH, J., concur.